

In the United States Patent and Trademark Office  
Board of Patent Appeals and Interferences

REPLY BRIEF

In re the Application of:

Daniel Arturo Delfin Farias and Ruben Alberto Wario Romo  
Serial No. 09/712,584  
Filed: November 14, 2000  
Attorney Docket No. SJO919990173

REPLENISHMENT MANAGEMENT SYSTEM AND METHOD

CERTIFICATE UNDER 37 CFR 1.8:

I hereby certify that this correspondence is being transmitted through the USPTO EFS-Web system over the Internet to the U.S. Patent and Trademark Office on March 17, 2008.

/David Victor/  
David Victor

Submitted by:

Konrad, Raynes & Victor LLP  
315 So. Beverly Dr., Ste. 210  
Beverly Hills CA 90212  
(310) 556-7983  
(310) 556-7984 (fax)

I. Status of the Claims

Claims 1-69 are pending and have been rejected.

The final rejection of the claims in the Final Office Action dated April 21, 2005 (April 2005 FOA) is being appealed for all pending claims 1-69.

## II. Grounds of Rejection to Be Reviewed on Appeal

A concise statement listing each ground of rejection presented for review is as follows:

A. Claims 1-38, 58-67, and 69 are rejected under 35 U.S.C. §103(a) as being unpatentable over the admitted prior art in the Specification in view of Johnson (U.S. Patent No. 5,712,989).

B. Claims 39-57 and 68 are rejected under 35 U.S.C. §103(a) as being unpatentable over the admitted prior art in the Specification in view of Johnson and further in view of Graves (U.S. H1743).

### III. Argument

In the Response to Argument with respect to claims 1-38, 58-67, and 69, the Examiner argued that “none of these claims require any computer performing any of the recited functionality/steps” and “the claims read merely on humans performing the steps, using a computer for some steps”. (Examiner Answer, pg. 6) Applicants traverse this finding because the claims expressly state computer related operations.

Independent claim 1 recites numerous operations as “computer related operations” performed in response to a request for a quantity of products from an acquiring entity. Further, claim 1 is a method claim that provides a transformation of an inventory database based on various operations being performed, including computer related operations. Independent claim 13 recites in the preamble “comprising the supplier performing a sequence of computer related operations”. Independent claim 18 and 58 recites computer operations to access and update product records in a computerized inventory database. Independent claims 20, 32, and 37 recite systems with means limitations, where the specification discloses the means as a computer system executing application programs. Claims 39, 51, and 56 recite a computer usable media including a computer program that causes a computer to perform operations.

The Examiner asserts that the written description of the preferred embodiments described on pgs. 6-8 of the Specification comprise an admission of prior art because of the statement in the Specification that the “ERP program 50 is a common materials resource planning (MRP) tool used by most manufacturers today”. (Spec., pg. 6, lines 14-16). See, Examiner Answer, pg. 6. This statement in the Detailed Description is not an admission that the operations described with respect to the ERP program 50 in the Detailed Description are prior art, but instead an acknowledgment that ERP programs in general are used by manufacturers today and known in the art. For instance, the Specification discloses that this ERP program 50, along with other programs, “implement[s] the replenishment process of the preferred embodiments.” (Spec, pg. 9, lines 25-26). Thus, although ERP programs in general are known in the art, the disclosure in the Detailed Description of using the ERP program 50 with respect to the preferred embodiments does not comprise an admission that the disclosed use of the ERP

program comprises prior art, but is instead a disclosure of how an ERP program is used in the preferred embodiments.

Moreover, Applicants never contended that ERP programs in general are not prior art nor do Applicants have any intention to make such an assertion as the Examiner proposes. (Examiner Answer, pg. 6) In fact, the Background Section of the Specification, which comprises admitted prior art, discusses the use of ERP programs to assist with inventory management and forecasting. (Specification, pgs. 1-2)

Thus, Applicants acknowledge, as done in the Background and Detailed Description Sections, that ERP programs in general are known and used in the prior art for inventory management purposes. However, this acknowledgment as to the general use of ERP programs in the inventory management art does not constitute an admission that the use of the ERP program as described in the Detailed Description as part of the preferred embodiments constitutes prior art. Such an interpretation of the Specification to classify the disclosed preferred embodiments as admitted prior art based upon the acknowledged prior art use of ERP programs in general is inappropriate.

In the Answer, the Examiner attacked Applicants arguments as “spurious” and “unresponsive” (Examiner Answer, pgs. 7-8), claimed that Applicants were arguing references individually (Examiner Answer, pgs. 7-8), and cited various legal principles followed by conclusory statements that Applicants arguments are insufficient and have failed to properly traverse the grounds of rejection. (Examiner Answer, pgs. 7-15) Applicants dispute these characterizations and submit that in the Appeal Brief, Applicants addressed specific claim requirements that are not taught or suggested by specific sections of the prior art references the Examiner cited, whether alone or in combination. For instance, in the Appeal Brief, Applicants noted the following deficiencies of the cited art with respect to the requirements of claim 1:

- Applicants argued that cited Johnson discusses a procedure where a customer places an order to a distributor computer, and that the cited Johnson does not teach the combination of claim requirements, including that the acquiring entity processes a request from the supplier for information on the requested quantity in a product record and then receives information from the supplier indicating a commitment quantity of a number of the products the supplier

intends to ship to an RSC to meet a requested quantity, where the supplier uses the requested information to determine the commitment quantity to indicate. (Appeal Br., pg. 23)

- Applicants argued that the Examiner has not cited any prior art that teaches or suggests that three parties, the acquiring entity, supplier and RSC all provide information to update the inventory database as claimed. (Appeal Br., pg. 23)

-

Accordingly, Applicants request the Board to overturn the claim rejections because, as set forth in the Appeal Brief, the cited art, alone or in combination, fails to teach or suggest the combination of claim requirements.

Dated: March 17, 2008

By: /David Victor/

David W. Victor  
Registration No. 39,867  
Phone: 310-553-7977